

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. D. Purakayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

1. O.A. 80 of 1997
Dr. D. Halдар & Ors VS UOI & Ors
2. O.A. 464 of 1997
Chinmoy Bhattacharya & Ors VS UOI & Ors
3. O.A. 465 of 1997
Dr. Subhasish Sengupta & Ors VS UOI & Ors
4. O.A. 466 of 1997
Dr. Amarjyoti Chaudhuri VS UOI & Ors
5. O.A. 467 of 1997
Gautam Mukhopadhyay VS UOI & Ors

For the petitioners : Mr. J.K.Biswas, Counsel
Mr. S.K.Mitra, Counsel

For the respondents : Mr. M.S.Banerjee, Counsel

Heard on : 18.8.2000 & 21.8.2000

Order on : 05.9.2000

O R D E R

G.S.Maingi, A.M.:

These five original applications have been heard analogously for the sake of convenience as they raise similar facts, relief and points of law, and are being disposed of by this common order.

2. In all these 5 OAs, the applicants are working as Director in the Geological Survey of India. The dispute involved in these cases is regarding fixation of seniority between general category employees i.e. the applicants and the reserved category employees i.e. the private respondents for the purpose of promotion to next higher grades.

3. In OA 80 of 1997, as it was filed, there were 16 applicants and 10 private respondents apart from two official respondents viz. Union of India through the Secretary, Ministry of Mines and the Director General, GSI, Calcutta. It appears from an order passed by

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an earlier Bench of this Tribunal on 6.3.97 that at the time of admission hearing of this OA, it was observed that different applicants had prayed for seniority over different private respondents and accordingly it was held that the application was defective for misjoinder of parties. Thereafter, on the prayer of the ld. counsel for the applicants, this OA was confined only in respect of applicant Nos. 1 to 6 whose claim of seniority was over private respondent Nos. 3 and 4 viz. Shri B.K.Alok and Shri Om Prakash. Accordingly, OA 80/97 was admitted only in respect of the prayer of applicant Nos. 1 to 6 and liberty was granted to other applicants to file appropriate separate applications. Pursuant to this liberty, four separate applications viz. OA 464, 465, 466 & 467 of 1997 have been filed by the 10 applicants whose names were deleted from OA 80 of 1997 as stated above.

4. It is the common case of the applicants in all the OAs that they were initially appointed as Geologist (Jr.) as direct recruits on being selected by the UPSC on diverse dates from 1965 onwards. From the post of Geologist (Jr) they were subsequently promoted to the post of Geologist (Sr) during the period between 1974 and 1981 as per recruitment rules framed in September 1974. The applicants were thereafter promoted to the next higher grade of Director. It is the further case of the applicants that the private respondents were also similarly promoted as Director. It is their common grievance that the private respondents, who belong to reserved categories, got accelerated promotion by virtue of reservation roster although they were junior to the applicants in the basic grade. A comparative chart showing the positions of the applicants and private respondents from the stage of Geologist (Jr) has been shown in annexure-A1 to OA 80 of 1997. The applicants state that the Hon'ble Supreme Court decided in R.K.Sabharwal -vs- State of Punjab reported in (1995) 2 SCC 745 that reservation is to be made with reference to posts and not with reference to vacancy. Thereafter, another decision of the Hon'ble Supreme Court was rendered in UOI -vs- Vir Pal Singh Chauhan's case,

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(1995) 6 SCC 684 in which it was held even though a reserved category candidate got accelerated promotion by virtue of reservation roster earlier than his senior general category candidate and the senior general category candidate is promoted later to the said higher grade, the general category candidate will regain his original seniority over such earlier promoted reserved category candidates in the promoted grade. The earlier promotion of the reserved category candidate does not confer him seniority over the general category candidate even though such general category candidate is promoted later to the said higher post.

5. The applicants further state that one Shri U.K.Bassi, a similarly situated person like the present applicants moved an original application before the Chandigarh Bench of this Tribunal bearing OA No. 515/96 and the official respondents therein accepted the aforesaid principles of law enunciated by the Hon'ble Supreme Court and issued necessary order dt. 10.12.96 but no benefit of the said order was given to the present applicants though they are similarly circumstanced employee.

7. It is their further case that the next promotional post for them is Director, Selection Grade and their contention is that unless their seniority position is fixed vis-a-vis the private respondents, they would again be deprived of this higher grade and the private respondents would be promoted again earlier than the applicants even they (the applicants) are senior to the private respondents.

8. The applicants have, therefore, prayed for a direction upon the official respondents to assign higher seniority position to the applicants over and above the private respondents in the grade of Geologist (Sr) and Director (Geology) and for granting them next higher selection grade of Director and further promotions on the basis of such refixed seniority with consequential benefits.

9. The official respondents have contested the claim of the applicants by filing a written reply. The basic facts averred by the applicants are not disputed. It is the case of the official

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respondents on the basis of the decision of the Hon'ble Supreme Court in Virpal Singh's case (supra), the DOPT issued an order on 30.1.97 as per OM No. 20011/1/96-Estt.(D) and decided to modify the existing policy of fixing seniority on promotion by providing that if a candidate belonging to SC/ST category is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate, who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted SC/ST candidate in the immediate higher post/grade. But this policy decision was effective only from the date of issue of the OM i.e. 30.1.1997. It is averred by the official respondents that the private respondents were promoted to the grade of Director (Geology) in May 1991 whereas the applicants along with three private respondents viz. S/Shri L.Sangma, S.D.Pawar, B.K.Saha (respondent Nos. 7,8 & 9 of OA 464/997) were promoted to the post of Director on diverse dates between May 1992 to December 1993 as per recruitment rules. It is, therefore, contended by the official respondents that since all the private respondents or the applicants were promoted prior to 30.1.97 i.e. date of issue of the aforesaid OM of DOPT, no benefit of the aforesaid OM of DOPT can be given to the applicants as claimed. It is also submitted by the official respondents that the private respondents were given promotion to the post of Geologist (Sr) prior to the applicants and in the post of Geologist(Sr), seniority of the applicants and private respondents was finalised in August 1994 as on 1.10.90. On the basis of such final seniority list, promotions were given to the private respondents to the next higher post of Director before the applicants prior to the decision of the Hon'ble Supreme Court either in the case of R.K.Sabharwal or in VirPal Singh Chauhan's case and therefore, the applicants cannot claim seniority over private respondents now. So far as the case before the Chandigarh bench is concerned, it is stated that by a speaking order passed on 4.9.97 (annexure-R1) this position was made clear and no benefit was also granted to the applicant of

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that case and hence there is no question of granting similar benefits to the applicants as well.

10. Though no counsel was present to represent the private respondents, some of the private respondents filed written reply contesting the claim of the applicants and as per these written replies same point was raised as has been raised by the official respondents that since they (the private respondents) got promotion to the post of Geologist (Sr) or Director prior to the decision of the Hon'ble Supreme Court in the aforesaid cases, their seniority position cannot be disturbed to the benefit of the applicants.

11. We have heard Mr. J.K.Biswas, ld. counsel for the petitioners and Mr. M.S.Banerjee, ld. counsel for the official respondents. Ld. Counsel for both sides argued extensively citing various decisions of the Hon'ble Supreme Court to press their point of view.

12. As already pointed out the broad facts in these case are not in dispute nor is there any dispute regarding the law laid down by the Hon'ble Apex court in the matter of fixation of seniority in respect of general category and reserved category candidates. The only dispute raised by the sides of the respondents is that since the private respondents got the benefit of higher promotion earlier than the applicants by virtue of reservation as provided in the recruitment rules prior to the decisions of the Hon'ble Supreme Court, the applicants cannot be granted any benefit of the said decisions.

13. We may first discuss very briefly the legal position as it stands now. In R.K.Sabharwal's case "(1995) 2 SCC 7450", a Constitution Bench of the Hon'ble Supreme Court held that ^{Esu} ~~that~~ the percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade and not with respect to vacancies. It was also held that once the number of posts reserved for being filled by reserved category candidates in a cadre, category or grade are filled by the operation of roster, the object of rule of reservation should be deemed to have been achieved and

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thereafter the roster cannot be followed except to the extent indicated ^{egm} in para 5 of the said judgement. It was further held that while determining the said number, the candidates belonging to the reserved category but selected/promoted on their own merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates. However, the decision of Sabharwal's case is directed to be operative only prospectively i.e. from the date of the judgement which is 19.2.1995.

14. Thereafter came the decision of the Hon'ble Supreme Court in the case of UOI -vs- Vir Pal Singh Chauhan & ors, (1995) 6 SCC 684 rendered on 10.10.95. It was held therein that roster would only ensure the prescribed percentage of reservation but would not affect seniority and that while the reserved candidates are entitled to accelerated promotions, they would not be entitled to consequential seniority. The seniority between the general and reserved candidates in promoted category would continue to be the same as was at the time of the initial appointment provided both belong to the same grade and not where the reserved candidate reached the next higher grade by virtue of accelerated promotion.

15. Then ^{egm} ~~the~~ came the decision in Ajit Singh Januja & Ors vs-State of Punjab & Ors, (1996) 2 SCC 715 decided on 1.3.96. In para 16 of this judgement it was held as under :-

"..... If a scheduled caste/scheduled tribe candidate is promoted earlier because of the rule of reservation/roster and his senior belonging to the general category is promoted later to that higher grade, the general category candidate shall regain his seniority over such earlier promoted SC/ST candidate. As already pointed out above that when a SC/ST candidate is promoted earlier by applying the rule of reservation/roster against a post reserved for such SC/ST candidate, in this process he does not supersede his seniors ^{egm} ~~belong to~~ the general category. In this process there was no occasion to examine the merit of such SC/ST candidates ^{egm}

vis-a-vis his seniors belong to the general category. As such it will be only rational, just and proper to hold that when the general category candidate is promoted later from the lower grade to the higher grade, he will be considered senior to a candidate belonging to the SC/ST who had been given accelerated promotion against the post reserved for him. Whenever a question arises for filling up a post reserved for SC/ST candidate in a still higher grade then such candidate belonging to SC/ST shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion, applying either principle of seniority-cum-merit or merit-cum-seniority. If this rule and procedure is not applied then result will be that majority of the posts in the higher grade shall be held at one stage by persons who have not only entered service on the basis of reservation and roster but have excluded the general category candidates from being promoted to the posts reserved for general category candidates merely on the ground of their initial accelerated promotions. This will not be consistent with the requirement or the spirit of Article 16(4) or Article 335 of the Constitution."

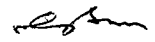
16. Certain doubts were raised as to the problems regarding implementation of the aforesaid decisions of the Hon'ble Supreme Court and the matter was again considered by the Hon'ble Supreme Court in the case of Ajit Singh & Ors-vs-State of Punjab & Ors reported in JT 1999(7) SC 153. All doubts raised have been elaborately discussed in this judgement dated 16.9.99 including the point of prospectivity in relation to the case of R.K.Sabharwal or Ajit Singh (first case) which point has also been raised in the instant OAs. In para 80 it was held as under :-

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"80. As accepted in Virpal (see 1995(6) SCC 684 at 702) and Ajit Singh (see 1996(2) SCC at p. 729), we hold that in case any senior general candidate at level 2 (Assistant) reaches level 3 (Superintendent Gr.II) before the reserved candidate (roster point promotee) at level 3 goes further up to level 4 in that case the seniority at level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at level 2. Further promotion to level 4 must be on the basis of such a modified seniority at level 3, namely, that the senior general candidate of level 2 will remain senior also at level 3 to the reserved candidate, even if the latter had reached level 3 earlier and remained there when the senior general candidate reached at that level 3. In cases where the reserved candidate has gone upto level 4 ignoring the seniority of the senior general candidate at level 3, seniority at level 4 has to be refixed (when the senior general candidate is promoted to level 4) on the basis of when the time of reserved candidate for promotion to level 4 would have come, if the case of senior general candidate was considered at level 3 in due time. To the above extent, we accept the first part of the contention of the learned counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.

17. In paras 88 and 91 of the judgement in Ajit Singh(2nd) case, the question of prospectivity of R.K.Sabharwal and Ajit Singh (1st) cases was considered and held as under :-

"88. It is axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to direct recruits and promotee cases. If a



court decided that in order only to remove hardship such roster point promotees are not to face reversions, then it would, in our opinion, be necessary to hold - consistent with our interpretation of Articles 14 and 16(1) - that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while courts can relieve immediate hardship arising out a past illegality, courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.95 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster point promotees shall have to be reviewed after 10.2.95 and will count only from the date on which they would have otherwise got normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the prospectivity point in relation to Sabharwal." (Emphasis added)

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91. Where before 1.3.96, i.e. the date of Ajit Singh's judgement, at the level 3, there were reserved candidates who reached there earlier and also senior general candidate who reached there later (but before the reserved candidate was promoted to level 4) and when in spite of the fact that the senior general candidate had to be treated as senior at level 3 (in view of Ajit Singh), the reserved candidate is further promoted to level 4- without considering the fact that the senior general candidate was also available at level 3 - then, after 1.3.96, it becomes necessary to review the promotion of the reserved candidate to level 4 and reconsider the same (without causing reversion to the reserved candidate who reached level 4 before 1.3.96). As and when the senior reserved candidate is later promoted to level 4, the seniority

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at level 4 has also to be refixed on the basis of when the reserved candidate at level 3 would have got his normal promotion, treating him as junior to the senior general candidate as level 3." (Underlining supplied)

18. In the instant cases, we are handicapped to the extent that neither party has brought on record the details about the total number of posts in the cadres of Geologist (Sr) or Director and the number of reserved category candidates occupying posts in excess of their quota nor is there any particulars as to when such quota had been achieved prior to 10.2.95 i.e. the decision in R. K. Sabharwal's case. We find that while admitting these cases, an interim order was granted restraining the official respondents from filling up the posts of Selection grade of Director. In the absence of material details it is not possible for us to give clear direction as claimed by the applicants. The plea taken by the respondents that the benefit of DOPT OM of January 1997 cannot be given to the applicants since all the private respondents were promoted much earlier cannot be accepted by us in view of Ajit Singh (2nd) case as quoted above which was delivered in 1999 after the aforesaid DOPT OM of 1997. While such reserved category promotees in excess of their quota cannot be reverted, the general category candidates cannot be deprived of their legitimately due promotions as per rules.

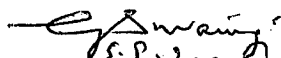
19. In view of the above, we dispose of all the five applications with a direction upon the official respondents to review and reconsider the position as on 10.2.95 on the basis of the decision in R.K. Sabharwal's case and redraw the seniority list of general category candidates vis-a-vis reserved category candidates from the cadre of Geologist (Sr) onwards on the basis of the principles laid down in Virpal Singh Chauhan & Ajit Singh (2nd) cases and give promotion to the eligible general category candidates to the higher posts accordingly with all consequential benefits without, however, reverting any reserved category candidates, who had been promoted

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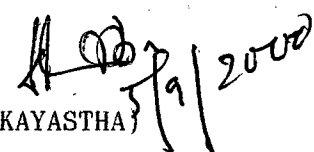
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wrongly earlier in excess of quota fixed for them as per rules. This order be complied with within three months from the date of communication of this order.

20. This common order will govern all the aforesaid five OAs. There will be no order as to costs in either of them.


(G.S. MAINGI)

MEMBER(A)


(D. PURAKAYASTHA)

MEMBER(J)